

June 24, 2003

HARRIMAN ASSOCIATES AND MSAD #71  
Request for Exemption from Chapter 65

ORDER

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## **I. SUMMARY**

We deny the request by Harriman Associates and Maine School Administrative District #71 (MSAD #71) for a waiver of certain provisions of Chapter 65 of the Commission's Rules.

## **II. BACKGROUND**

On December 19, 2002, Frank L. Crabtree, PE, representing Harriman Associates and MSAD #71, filed a request for an exemption from section 2.H of Chapter 65, §§ 2(D) and (H) of the Commission's Water Main Extension and Service Line Rule. Section 6(E) of Chapter 65 permits the Commission to grant exemptions for good cause. The exemption is requested to permit MSAD #71 to extend a Kennebunk, Kennebunkport & Wells Water District 12" (District) water main approximately 1,930 feet along Route 35 to the southerly property line of the MSAD #71 parcel and, from that point, install a 10" private water main approximately 1,960 feet to the proposed elementary school building. Under sections 2(D) and 2(H), the main extension would normally be made in the municipally accepted public way to a point opposite the center of the new building. MSAD #71 argues that its proposed "cross country 'school parcel' service line" will cost approximately \$80,000 less than the route contemplated by Chapter 65. It also claims it will avoid ledge rock blasting likely in the municipal route and the associated disruption involved with working in the roadway. Finally, MSAD #71 states that this stretch of roadway will be reconstructed by MDOT in the next few years, which may result in road regrades which would impact the water main extension in the roadway.

The Water District filed its response to the subject request on January 16, 2003. The Water District indicated that a 3,230' extension of the 12" water main in Route 35 is necessary to serve the proposed elementary school and for the proper development of the water system.<sup>1</sup> The District agrees that its extension route will require MSAD #71 to install an additional 500' of 10" and 12" water main. The District also reports that there

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<sup>1</sup> Chapter 65, § 2(C) states that "the utility may require a main extension if it decides that the private line will be detrimental to the proper development of the water system."

is the potential for additional customers and growth in the area around and beyond the proposed school. The proposed main could eventually be looped to a main in Thompson Road as growth in that area continues.

On June 3, both the District and MSAD #71 filed additional information in support of their positions, at the request of the Commission.

### **III. DISCUSSION**

This case presents the unusually though not unique situation of two duly acquired public entities disputing how public funds should be spend. While both have presented cogent arguments for why their particular public purses should be less affected, we have concluded that good cause does not exist to grant an exemption and that the proposed elementary school should be served through a main extension in full compliance with Chapter 65 of the Commission's Rules. The main extension should begin at the end of the Water District's existing water main in Route 35 and run along Route 35 for approximately 3,230' to a point opposite the center of the school. The rule is in place to allow for the orderly growth and maintenance of public water systems. The effect of the requested exemption would be to shift of the cost of approximately 1,300 feet of main extension in Route 35 from MSAD #71 to future customers wishing to obtain water service along Route 35 north of the proposed private line. We note that, under the town comprehensive plan, development north of the proposed line is to be encouraged. Should such development occur, MSAD #71 will be in a position to recoup some of the costs it will incur under the rule. While the route required by the Rule will increase the construction cost to MSAD #71, it will also reduce the amount of water main to be owned and maintained by MSAD #71.

Accordingly, we

### **O R D E R**

1. That the Harriman Associates and MSAD #71 request for an exemption from Chapter 65, §§ 2(D) and (H) of the Commission's Rules is hereby denied; and,
2. That the main extension, to serve the proposed Kennebunk Elementary School, shall begin at the end of the District's existing

water main in Route 35 and shall run along Route 35 for approximately 3,230' to a point opposite the center of the school.

Dated at Augusta, Maine this 24<sup>th</sup> day of June, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:    Welch  
    Nugent  
    Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.